

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

B.A. CONSTRUCTION and
MANAGEMENT, INC., and B.A.
REAL ESTATE, L.L.C.,

CASE NO. 04-CV-73910

Plaintiffs,

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

-vs-

KNIGHT ENTERPRISES, INC.,

VIRGINIA M. MORGAN
UNITED STATES MAGISTRATE JUDGE

Defendant.

ORDER:

**(1) ADOPTING PART AND REJECTING IN PART THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION;**
**AND (2) DENYING PLAINTIFFS' MOTION FOR EXEMPLARY DAMAGES AND
ATTORNEY FEES AS UNTIMELY**

Before the Court is the Magistrate Judge's October 2, 2007 Report and Recommendation ("R&R") denying Plaintiffs' Motion for Exemplary Damages and Attorneys Fees. On October 12, 2007, Plaintiffs filed timely Objections to the R&R. Defendant filed a Response on October 29, 2007. Having conducted a *de novo* review of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court is convinced that the Magistrate Judge correctly held that Plaintiffs' Motion should be denied as untimely. However, the Court rejects in part the Magistrate Judge's determination that exemplary damages and attorneys fees were not permitted under the statute. As the Motion was untimely the Court declines to examine the Motion on its merits.

Therefore, the Court hereby:

- (1) **ADOPTS IN PART AND REJECTS IN PART** the Magistrate Judge's Report and Recommendation (Doc. No. 126); and
- (2) **DENIES** Plaintiffs' Motion for Exemplary Damages and Attorney Fees as untimely. (Doc. No. 117).

SO ORDERED.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: April 1, 2008

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on April 1, 2008.

s/Denise Goodine

Case Manager